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# **Economic Development, Trade & Banking Committee**

**Tuesday, February 21, 2006  
9:30 am – 12:00 pm  
306 HOB**

# **Committee Meeting Notice**

## **HOUSE OF REPRESENTATIVES**

**Speaker Allan G. Bense**

### **Economic Development, Trade & Banking Committee**

**Start Date and Time:** Tuesday, February 21, 2006 09:30 am

**End Date and Time:** Tuesday, February 21, 2006 12:00 pm

**Location:** 306 HOB

**Duration:** 2.50 hrs

#### **Consideration of the following bill(s):**

HB 667 Credit Counseling Services by Hasner

HB 7017 Review under the Open Government Sunset Review Act regarding Economic Development Agencies by  
Governmental Operations Committee

#### **Consideration of the following proposed committee bill(s):**

PCB EDTB 06-01 -- Enterprise Zone Act

PCB EDTB 06-03 -- Internet Phishing

**NOTICE FINALIZED on 02/10/2006 10:25 by GOLDING.SARA**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS



**BILL #:** HB 667

Credit Counseling Services

**SPONSOR(S):** Hasner

**TIED BILLS:**

**IDEN./SIM. BILLS:**

| REFERENCE   | ACTION  | ANALYST  | STAFF DIRECTOR   |
|---|---------|--|--|
| 1) <u>Economic Development, Trade &amp; Banking Committee</u> | <u></u> | <u>Olmedillo</u>  | <u>Carlson</u>  |
| 2) <u>Business Regulation Committee</u>                       | <u></u> | <u></u>  | <u></u>  |
| 3) <u>Finance &amp; Tax Committee</u>                         | <u></u> | <u></u>  | <u></u>  |
| 4) <u>Commerce Council</u>                                    | <u></u> | <u></u>  | <u></u>  |
| 5) <u></u>  | <u></u> | <u></u>  | <u></u>  |

### SUMMARY ANALYSIS

Credit counseling services generally advertise a service intended to assist people in managing their personal debt. Credit counseling services may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

This bill creates a definition for “creditor contribution” to mean any sum that a creditor agrees to contribute to a credit counseling agency towards amounts due the creditor by the debtor. In addition, it prevents the allocation of such credit contribution against the debtor’s payment account to the creditor.

The bill adds “negotiation” and “settlement” to the definition of debt management services.

The bill removes a cap limiting fees that may be charged to out-of-state customers.

The bill allows a debt management service or credit counseling to charge a reasonable and separate fee for insufficient funds transactions.

This bill expands the current requirement that any person engaged in debt management services or credit counseling services obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors, to include other accounts.

Finally, the bill authorizes a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor on behalf of the debtor.

The fiscal impact of this bill is indeterminate. Please see “Fiscal Analysis and Economic Impact Statement.”

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Credit counseling organizations generally advertise a service intended to assist people with managing their personal debt. Credit counseling organizations may attempt to help an individual avoid foreclosure and bankruptcy, reduce interest rates, and lower or consolidate monthly payments.

Credit counseling organizations may also offer individual advice for developing budgets, managing money, using credit, and building a savings plan.

Many credit counseling services offer assistance through “Debt Management Plans” (DMP). The DMP is advertised as a way to pay down debt through monthly deposits to the credit counseling service, which in turn distributes these funds to the creditors. Credit counseling services advertise that they work with clients and creditors to design a debt repayment program that will minimize monthly payments, interest and related fees, providing a manageable plan for clients.

A relatively new law became effective in 2004 directly regulating credit counseling organizations.<sup>1</sup> However, it provides exceptions for certain persons who may engage in debt management including those in the practice of law, any person who incidentally engages in debt adjustment, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Florida Housing Finance Corporation, a bank, a bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Department of Financial Services.<sup>2</sup>

##### Proposed Changes

This bill defines “creditor contribution” to mean any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of the debtors. However, the bill specifies that a “creditor contribution” may not reduce the amounts a debtor pays towards his or her debt. This definition ensures that consumers receive credit for 100% of the dollars that they pay for consolidation, regardless of any contributions by the credit card companies.

The industry-wide practice is for various creditors (i.e., Visa, Mastercard, etc.) to make contributions to credit counseling agencies for the work that credit counseling agencies do with consumers. Typically, an organization engaged in debt management services withholds amounts due to the creditor by the debtor, which the creditor treats as a contribution to an exempt organization.

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<sup>1</sup> s. 1, ch. 2004-351., created as ss. 817.801-6, F.S.

<sup>2</sup> s. 817.803, F.S.

The bill defines “debt management services” to include the negotiation and settlement of an indebtedness.

The bill clarifies that the limit on fees a credit counseling service charges does not apply to debtors residing out of Florida. This language will not prohibit a person engaged in debt management services from charging higher fees or costs to debtors located in other states than they do to Florida residents.

Furthermore, the bill clarifies that the law does not prohibit a debt management service or credit counseling service from charging a reasonable and separate fee for insufficient funds transactions.

Section 817.804, F.S., currently requires any person engaged in debt management services or credit counseling services to obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors. The bill amends the provision to “include” the above-mentioned accounts, implying that the audit may include any other accounts.

Finally, the bill requires a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor; and it clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

#### C. SECTION DIRECTORY:

Section 1 amends s. 817.801, F.S., creating the definition of “creditor contribution and revising the definition of debt management services to include “negotiation and settlement”.

Section 2 amends s. 817.802, F.S., removing a cap limiting fees that may be charged to out-of-state customers; and clarifying a debt management service or credit counseling service to charge a reasonable and separate fee for insufficient funds transaction.

Section 3 amends s. 817.804, F.S., expanding the current requirement that any person engaged in debt management services or credit counseling services obtain an annual audit of all accounts in which the funds of debtors are deposited and subsequently disbursed to creditors, to include other accounts.

Section 4 amends s. 817.805, F.S., requiring a debt management or credit counseling service to deduct any creditor contributions from all funds it is required to disburse to the creditor from those it receives from the debtor; and clarifies that any person engaged in debt management services or credit counseling services shall only maintain a trust account for receipt of any funds from any and all debtors.

Section 5 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate.

**D. FISCAL COMMENTS:**

This bill clarifies that the limit on fees a credit counseling service charges does not apply to debtors residing out of state. This affects the credit counseling service business by limiting the fees it can charge.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other: None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

HB 667

2006

1                                   A bill to be entitled  
2       An act relating to credit counseling services; amending s.  
3       817.801, F.S.; revising and providing definitions;  
4       amending s. 817.802, F.S., relating to unlawful fees and  
5       costs; limiting application to certain debtors; amending  
6       s. 817.804, F.S.; revising annual audit requirements;  
7       amending s. 817.805, F.S.; including creditor  
8       contributions within an authorized deduction from  
9       requirements for disbursement of funds; providing an  
10      effective date.

11  
12   Be It Enacted by the Legislature of the State of Florida:

13  
14       Section 1.   Section 817.801, Florida Statutes, is amended  
15   to read:

16       817.801   Definitions.--As used in this part:

17       ~~(1)(4)~~   "Credit counseling agency" means any organization  
18   providing debt management services or credit counseling  
19   services.

20       ~~(2)(1)~~   "Credit counseling services" means confidential  
21   money management, debt reduction, and financial educational  
22   services.

23       (3)   "Creditor contribution" means any sum that a creditor  
24   agrees to contribute to a credit counseling agency, whether  
25   directly or by setoff against amounts otherwise payable to the  
26   creditor on behalf of debtors. However, a creditor contribution  
27   may not reduce any sums to be credited to the account of a  
28   debtor making a payment to the credit counseling agency for



HB 667

2006

further payment to the creditor.

~~(4)(2)~~ "Debt management services" means services provided to a debtor by a credit counseling organization for a fee to:

(a) Effect the adjustment, negotiation, settlement, compromise, or discharge of any unsecured account, note, or other indebtedness of the debtor; or

(b) Receive from the debtor and disburse to a creditor any money or other thing of value.

~~(5)(3)~~ "Person" means any individual, corporation, partnership, trust, association, or other legal entity.

Section 2. Section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.--

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than \$50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than \$120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801 ~~(4)(2)~~(b) are provided, the person may charge the greater of 7.5 percent of the amount paid monthly by the debtor to the person or \$35 per month.

(2) ~~No provision of~~ This section does not prohibit ~~prohibits~~ any person, while engaging in debt management or credit counseling services, from imposing upon and receiving

HB 667

2006

from a debtor a reasonable and separate charge or fee for  
insufficient funds transactions.

Section 3. Paragraph (a) of subsection (1) of section  
817.804, Florida Statutes, is amended to read:

817.804 Requirements; disclosure and financial  
reporting.--

(1) Any person engaged in debt management services or  
credit counseling services shall:

(a) Obtain from a certified public accountant licensed  
under s. 473.308 an annual audit that shall include ~~of~~ all  
accounts of such person in which the funds of debtors are  
deposited and from which payments are made to creditors on  
behalf of debtors.

Section 4. Section 817.805, Florida Statutes, is amended  
to read:

817.805 Disbursement of funds.--Any person engaged in debt  
management or credit counseling services shall disburse to the  
appropriate creditors all funds received from a debtor, less any  
fees permitted by s. 817.802 and any creditor contributions,  
within 30 days after receipt of such funds. Further, any person  
engaged in such services shall maintain a separate trust account  
for the receipt of any funds from debtors ~~each debtor~~ and the  
disbursement of such funds on behalf of such debtors ~~debtor~~.

Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0667**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Economic Development Trade &  
2 Banking Committee  
3 Representative(s) Hasner offered the following:  
4

**Amendment**

6 Remove line 32 and insert:

7 (a) Effect the adjustment,

000000



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7017      PCB GO 06-09      OGSR Economic Development Agencies  
**SPONSOR(S):** Governmental Operations Committee, Rivera  
**TIED BILLS:** None      **IDEN./SIM. BILLS:** SB 734

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| REFERENCE  | ACTION   | ANALYST                     | STAFF DIRECTOR     |
|--|----------|-----------------------------|--------------------|
| Orig. Comm.: Governmental Operations Committee     | 5 Y, 1 N | Williamson                  | Williamson         |
| 1) Economic Development, Trade & Banking Committee |          | Olmedillo <i>(initials)</i> | Carlson <i>MWC</i> |
| 2) State Administration Council                    |          |                             |                    |
| 3) _____   |          |                             |                    |
| 4) _____   |          |                             |                    |
| 5) _____   |          |                             |                    |

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### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

The bill reenacts the public records exemption for certain business information held by an economic development agency. Upon written request from a business, information concerning plans, intentions, or interests of that business to locate, relocate, or expand its business activities in Florida is confidential and exempt from public records requirements for a limited period of time. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state and local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Current law provides a public records exemption for certain business information held by an economic development agency.<sup>1</sup> Upon written request from a business, information concerning plans, intentions, or interests of that business to locate, relocate, or expand its business activities in Florida is confidential and exempt<sup>2</sup> from public records requirements for a limited period of time.<sup>3</sup> The information remains confidential and exempt:

- For 24 months after the date an economic development agency receives a request for confidentiality;
- Until disclosed by the business requesting confidentiality; or
- Until the information is otherwise disclosed, whichever occurs first.<sup>4</sup>

Pursuant to the Open Government Sunset Review Act,<sup>5</sup> the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

##### Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes, reorganizes the exemption, and removes superfluous language.

#### C. SECTION DIRECTORY:

Section 1 amends s. 288.075, F.S., to remove the repeal date.

Section 2 provides an effective date of October 1, 2006.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

<sup>1</sup> "Economic development agency" means the Office of Tourism, Trade, and Economic Development; an industrial development authority; the Florida Space Authority; the Florida Aerospace Finance Corporation; a local government economic development agency; a research and development authority; or a private entity authorized by the state or a local government to promote the business interests of the state or that local government. Section 288.075(1), F.S.

<sup>2</sup> There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record may not be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>3</sup> Section 288.075(2), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 119.15, F.S.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may represent a minimal non-recurring positive impact on state and local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state and local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.



HB 7017

2006

1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act regarding economic development agencies;  
4           amending s. 288.075, F.S., which provides an exemption  
5           from public records requirements for information held by  
6           an economic development agency concerning plans,  
7           intentions, or interests of a private corporation,  
8           partnership, or person to locate, relocate, or expand any  
9           of its business activities in this state; making editorial  
10          changes; removing superfluous provisions; removing the  
11          scheduled expiration of the exemption under the Open  
12          Government Sunset Review Act; providing an effective date.

13  
14   Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1.   Section 288.075, Florida Statutes, is amended  
17   to read:

18           288.075   Confidentiality of records.--

19           (1)   As used in this section, the term "economic  
20   development agency" means:

21           (a)   The Office of Tourism, Trade, and Economic  
22   Development;;τ

23           (b)   Any industrial development authority created in  
24   accordance with part III of chapter 159 or by special law;;τ

25           (c)   The Florida Space Authority created in part II of  
26   chapter 331;;τ

27           (d)   The Florida Aerospace Finance Corporation created in  
28   part III of chapter 331;;τ

HB 7017

2006

29        (e)    The public economic development agency of a county or  
30    municipality; ~~or~~

31        (f)    Any research and development authority created in  
32    accordance with part V of chapter 159; or. ~~The term also~~  
33    ~~includes~~

34        (g)    Any private agency, person, partnership, corporation,  
35    or business entity when authorized by the state, a municipality,  
36    or a county to promote the general business interests or  
37    industrial interests of the state or that municipality or  
38    county.

39        (2)    Upon written request from a private corporation,  
40    partnership, or person, ~~records of an economic development~~  
41    ~~agency which contain or would provide information held by an~~  
42    economic development agency concerning plans, intentions, or  
43    interests of that ~~such~~ private corporation, partnership, or  
44    person to locate, relocate, or expand any of its business  
45    activities in this state is ~~are~~ confidential and exempt from s.  
46    119.07(1) and s. 24(a), Art. I of the State Constitution for 24  
47    months after the date an economic development agency receives a  
48    request for confidentiality or ~~until disclosed by an economic~~  
49    ~~development agency pursuant to subsection (4) or by the party~~  
50    ~~requesting confidentiality under this section. Confidentiality~~  
51    ~~must be maintained until the expiration of the 24 month period~~  
52    ~~or until documents or information~~ is ~~are~~ otherwise disclosed,  
53    whichever occurs first. ~~Any confidentiality provided under this~~  
54    ~~section does not apply when any party petitions a court of~~  
55    ~~competent jurisdiction and, in the opinion of the court, proves~~  
56    ~~need for access to such documents. This exemption expires~~

HB 7017

2006

~~October 2, 2006, and is subject to review by the Legislature under the Open Government Sunset Review Act of 1995 in accordance with s. 119.15.~~

(3) An economic development agency may extend the period of confidentiality specified in subsection (2) for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that the private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. A request to extend the period of confidentiality must be received prior to the expiration of confidentiality provided in subsection (2) ~~This section does not waive any provision of chapter 120 or any other provision of law requiring a public hearing.~~

(4) Trade secrets as defined in s. 812.081 relating to the plans, intentions, or interests of a corporation, partnership, or person who has requested confidentiality pursuant to this section, held by an economic development agency, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the date on which an economic development agency receives a request for confidentiality or until otherwise disclosed, whichever occurs first.

(5) A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information pursuant to

HB 7017

2006

this section, until 90 days after such information is made public, unless such public officer or employee is acting in an official capacity, the agreement does not accrue to the personal benefit of such public officer or employee, and, in the professional judgment of such officer or employee, the agreement is necessary to effectuate an economic development project.

~~(5) An economic development agency may extend the period of confidentiality specified in subsection (2) for up to an additional 12 months upon written request from the private corporation, partnership, or person who originally requested confidentiality under this section and upon a finding by the economic development agency that such private corporation, partnership, or person is still actively considering locating, relocating, or expanding its business activities in this state. Such a request for an extension in the period of confidentiality must be received prior to the expiration of any confidentiality originally provided under this section.~~

~~(6) Notwithstanding the period of confidentiality specified in subsection (2), trade secrets, as defined by s. 812.081, contained in the records of an economic development agency relating to the plans, intentions, or interests of a corporation, partnership, or person who has requested confidentiality pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for 10 years after the date an economic development agency receives a request for confidentiality or until otherwise disclosed, whichever occurs first. The 10 year period of confidentiality provided by this subsection does not apply to~~

HB 7017

2006

113 | ~~any portion of the records other than trade secrets as defined~~  
 114 | ~~by s. 812.081.~~


115 |       ~~(7)~~ Any person who is an employee of an economic  
 116 | development agency who violates the provisions of this section  
 117 | commits a misdemeanor of the second degree, punishable as  
 118 | provided in s. 775.082 or s. 775.083.

119 |       Section 2. This act shall take effect October 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EDTB 06-01      Enterprise Zone Act  
**SPONSOR(S):** Economic Development, Trade & Banking Committee  
**TIED BILLS:**      **IDEN./SIM. BILLS:**

| REFERENCE  | ACTION | ANALYST | STAFF DIRECTOR  |
|--|--------|---------|---|
| Orig. Comm.: Economic Development, Trade & Banking Committee |        | Carlson | Carlson  |
| 1)   |        |         |   |
| 2)   |        |         |   |
| 3)   |        |         |   |
| 4)   |        |         |   |
| 5)   |        |         |   |

### SUMMARY ANALYSIS

In 2005, the Florida Enterprise Zone Act was amended, re-enacted, and scheduled to repeal in 2015.<sup>1</sup> Subsequently, staff from the Department of Revenue, the Governor's Office of Tourism, Trade and Economic Development and House Members raised concerns over the application of certain provisions of the revised Act.

The bill provides corrections to the Act as follows:

- The bill amends two obsolete expiration dates for related provisions, to make them consistent with the expiration of the Enterprise Zone Act.
- The bill also clarifies that the enterprise zone building materials sales tax refund may only be used once per parcel of real property unless there is a change in ownership of the real property.
- The bill amends the definition of "new job has been created" for purposes of the enterprise zone jobs tax credit against the sales and corporate income taxes.
- This bill also provides that businesses and property owners subject to exclusion from an existing enterprise zone by a boundary amendment must be given written notice by a local government 90 days prior to the adoption of a resolution proposing such an amendment.
- The bill also provides a limited two-year grandfather period for projects involving the rehabilitation of real property that were excluded from an enterprise zone because of the 2005 revision to the law if the area in which the project was located fell short by 5 or fewer percentage points of the required poverty thresholds.

The bill will have a fiscal impact on state government. That impact has not been estimated to date.

<sup>1</sup> See ch. 2005-287, L.O.F.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will grandfather certain businesses that would otherwise be excluded from eligibility under the Act and will allow these businesses to receive enterprise zone tax incentives.

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation:

##### **Florida Enterprise Zone Program**

The Florida Enterprise Zone Act (act), codified in ss. 290.001-290.016, F.S., was created:

to provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.<sup>2</sup>

The Florida Enterprise Zone Act of 1994 was scheduled to be repealed on December 31, 2005, but was re-enacted as the Florida Enterprise Zone Act (act) by ch. 2005-287, L.O.F., for an additional ten years, and is now scheduled to be repealed December 31, 2015.

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones. The act established a process for the nomination and designation of a maximum of 20 enterprise zones in 1994.<sup>3</sup> Subsequently, the Legislature has designated additional zones. Currently, there are 55 enterprise zones in the state. When the Enterprise Zone Act was re-enacted by ch. 2005-287, L.O.F., the 53 existing enterprise zones were allowed to apply for re-designation; 51 of 53 have been re-designated. Four of the 55 enterprise zones were created by ch. 2005-244, L.O.F.: City of Lakeland, Indian River County, Sumter County, and Orange County. There are also three Federal Enterprise Communities and two Federal Empowerment Zones. Certain federal, state, and local incentives are authorized to induce private businesses to invest in these enterprise zones.

##### **State Incentives**

The program's incentives are as follows:

- Jobs credit against sales or corporate income taxes: In order to be eligible, businesses must increase the number of full time jobs. The credit amount varies based on job location and wage of employee.<sup>4</sup>
- Property tax credit: New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid.<sup>5</sup>
- Sales tax refund for building materials: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20

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<sup>2</sup> Section 290.003, F.S.

<sup>3</sup> Sections 290.0055 and 290.0065, F.S.

<sup>4</sup> Sections 212.096 and 220.181, F.S.

<sup>5</sup> Section 220.182, F.S.



percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.<sup>6</sup>

- Sales tax refund for business property used in an enterprise zone: A refund is available for sales taxes paid on the purchase of business property with a purchase price of \$5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.<sup>7</sup>

### **Local Incentives**

The following are examples of local incentives:

- Sales tax exemption for electrical energy used in an enterprise zone: A sales tax exemption (state and local taxes) is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such business.<sup>8</sup>
- Economic development ad valorem tax exemption: Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions.<sup>9</sup>
- Occupational license tax exemption: By ordinance, the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone.<sup>10</sup>
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.<sup>11</sup>

### **State Agencies**

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) administers the Florida Enterprise Zone Act; the Department of Revenue (DOR) reviews and approves or denies a business's application for enterprise zone tax credits; and Enterprise Florida, Inc., is responsible for marketing the act.

### **Effect of Proposed Changes:**

#### **Building Materials Sales Tax Exemption**

The bill clarifies that the sales tax refund for building materials used to rehabilitate real property in an enterprise zone may only be used once per parcel of real property, unless there is a change in ownership of the real property. This section provides that this provision applies retroactively to July 1, 2005.

Until July 1, 2005, the sales tax refund for building materials could only be used once per parcel of real property. During the 2005 Regular Session, this provision was removed with the intent of allowing the exemption to be granted to subsequent owners of a parcel of property. However, the 2005 change had the unintended consequence of broadening the exemption by allowing it to be used multiple times per parcel. This bill restores the pre-2005 language, providing that the exemption may only be used once per parcel, and amends the provision to allow subsequent owners of the parcel to be eligible for the exemption.

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<sup>6</sup> Section 212.08(5)(g), F.S.

<sup>7</sup> Section 212.08(5)(h), F.S.

<sup>8</sup> Sections 212.08(15) and 166.231(8), F.S.

<sup>9</sup> Section 196.1995, F.S.

<sup>10</sup> Section 205.054, F.S.

<sup>11</sup> Section 290.0057(1)(c), F.S.

## **Definition of Job Creation**

The bill amends the definition of "new job has been created" for purposes of the enterprise zone job tax credit against sales tax. This provides that to be eligible for the job tax credit a business located in an enterprise zone must demonstrate to DOR that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date. Currently, a business must demonstrate that the number of full time jobs has increased from the average of the previous 12 months. According to DOR, changing the provision will make it easier to calculate when a new job has been created, because it ties that calculation to a specified date.

The bill amends the definition of "new job has been created" for purposes of the enterprise zone job tax credit against the corporate income tax. This will provide that to be eligible for the job tax credit a business located in an enterprise zone must demonstrate to DOR that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date.

The bill also provides that a business is eligible for the enterprise zone job tax credit against corporate income tax, if they can demonstrate to DOR that, on the date of application, the total number of full time jobs is greater than it was 12 months prior to such date.

## **Notice of Proposed Zone Boundary Changes**

The bill requires that a local government intending to seek an enterprise zone boundary change provide written notice to all property owners and businesses that may be excluded by the boundary change at least 90 days before adopting a resolution seeking such a change. Currently, there is no notice requirement for such boundary changes and affected businesses may lose their eligibility without their knowledge.

## **Relief for Businesses Excluded in Zones by 2005 Law**

The bill provides for a limited, two-year period in which a project excluded from an enterprise zone through the redesignation process required by ch. 2005-287, L.O.F., because the area in which it was located fell within 5 percentage points of the required poverty threshold may retain eligibility for the building materials tax exemption provided by s. 212.08(5)(g) if it meets the following requirements:

- The project must be located in an enterprise zone on or before December 31, 2005;
- The project must have a duration extending beyond December 31, 2005;
- The project has been excluded from the enterprise zone because the portion of the zone in which the project is located did not meet the pervasive poverty rate requirements of s. 290.0058(2)(a) or (b);
- The difference between the pervasive poverty rate requirements of s. 290.0058(2)(a) and the actual poverty rate in the area in which the project is located must be 5 percentage points or less;
- The business applies for a certificate of eligibility for the project with the enterprise zone development agency by November 1, 2006 and demonstrates that the project meets the requirements of this section; and
- The enterprise zone development agency provides a copy of the certificate of eligibility to the Department of Revenue.

This provision is intended to provide limited relief for multi-year projects involving the rehabilitation of real property located in an enterprise zone that were planned and begun before the 2005 law took place and that have subsequently lost their planned tax benefit eligibility.

## **Expiration Dates**

The bill changes an obsolete expiration date within the definition of "adjusted federal income," to correspond with the expiration date of the Florida Enterprise Zone Act, which is December 31, 2015.

### **C. SECTION DIRECTORY:**

Section 1: Amends s. 195.099, F.S., to correct an expiration date.

Section 2: Amends s. 220.03(1)(ff), F.S., to revise the definition of "new job has been created."

Section 3: Amends s. 220.08(5)(g), F.S., to limit the exemption of taxes paid for the rehabilitation of real property in an enterprise zone to one exemption per parcel unless there has been a change in ownership; providing for retroactive application.

Section 4: Amends s. 212.096, F.S., to revise the definition of "new job has been created."

Section 5: Amends s. 220.13, F.S., to correct expiration dates.

Section 6: Amends s. 220.181, F.S., to revise the requirement for demonstrating an increase in jobs.

Section 7: Amends s. 290.0055, F.S., to require a local government to provide notice to affected property owners and businesses of a proposed boundary change.

Section 8: Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The Revenue Estimating Conference has not reviewed this bill to date.
2. Expenditures: The Revenue Estimating Conference has not reviewed this bill to date.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The Revenue Estimating Conference has not reviewed this bill to date.
2. Expenditures: The Revenue Estimating Conference has not reviewed this bill to date.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will provide limited relief to certain businesses excluded from an existing enterprise zone by operation of ch. 2005-287, L.O.F., if that business was excluded in the course of the redesignation process enacted in law because the area in which it was located fell short of the required poverty thresholds by 5 or fewer percentage points.

In addition, Commercial and residential owners of real property will only be eligible to receive the enterprise zone building materials sales tax credit once per parcel of real property.

D. FISCAL COMMENTS: None.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

1 A bill to be entitled

2 An act relating to the Enterprise Zone Act; amending s.  
3 195.099, F.S.; correcting an expiration date; amending s.  
4 220.03, F.S.; revising the definition of "new job that has  
5 been created"; amending s. 212.08, F.S.; limiting the tax  
6 exemption for the rehabilitation of real property to one  
7 parcel of real property under certain circumstances;  
8 providing for retroactive application; amending s.  
9 212.096, F.S.; revising the definition of "new job that  
10 has been created"; amending s. 220.13, F.S.; correcting an  
11 expiration date; amending s. 220.181, F.S.; revising the  
12 requirement for demonstrating an increase in the number of  
13 jobs for the jobs tax credit; amending s. 290.0055, F.S.;  
14 requiring that business and property owners be notified of  
15 an enterprise zone boundary change; providing that certain  
16 projects shall remain eligible for a business property tax  
17 exemption until December 31, 2007; providing retroactive  
18 application; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Paragraph (b) of subsection (1) of section  
23 195.099, Florida Statutes, is amended to read:

24 (b) The provisions of this subsection shall expire and be  
25 void on the date specified in s. 290.016 for the expiration of  
26 the Florida Enterprise Zone Act ~~June 30, 2005~~.

27 Section 2. Paragraph (ff) of subsection (1) of section  
28 220.03, Florida Statutes, is amended to read:

29 (1) SPECIFIC TERMS.--When used in this code, and when not  
30 otherwise distinctly expressed or manifestly incompatible with

the intent thereof, the following terms shall have the following meanings:

(ff) "New job has been created" means that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date ~~has increased in an enterprise zone from the average of the previous 12 months,~~ as demonstrated to the department by a business located in the enterprise zone.

Section 3. Paragraph (g) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

(5) EXEMPTIONS; ACCOUNT OF USE.--

(g) Building materials used in the rehabilitation of real property located in an enterprise zone.--

1. Building materials used in the rehabilitation of real property located in an enterprise zone shall be exempt from the tax imposed by this chapter upon an affirmative showing to the satisfaction of the department that the items have been used for the rehabilitation of real property located in an enterprise zone. Except as provided in subparagraph 2., this exemption inures to the owner, lessee, or lessor of the rehabilitated real property located in an enterprise zone only through a refund of previously paid taxes. To receive a refund pursuant to this paragraph, the owner, lessee, or lessor of the rehabilitated real property located in an enterprise zone must file an application under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable, which includes:

a. The name and address of the person claiming the refund.

59           b. An address and assessment roll parcel number of the  
60 rehabilitated real property in an enterprise zone for which a  
61 refund of previously paid taxes is being sought.

62           c. A description of the improvements made to accomplish the  
63 rehabilitation of the real property.

64           d. A copy of the building permit issued for the  
65 rehabilitation of the real property.

66           e. A sworn statement, under the penalty of perjury, from  
67 the general contractor licensed in this state with whom the  
68 applicant contracted to make the improvements necessary to  
69 accomplish the rehabilitation of the real property, which  
70 statement lists the building materials used in the rehabilitation  
71 of the real property, the actual cost of the building materials,  
72 and the amount of sales tax paid in this state on the building  
73 materials. In the event that a general contractor has not been  
74 used, the applicant shall provide this information in a sworn  
75 statement, under the penalty of perjury. Copies of the invoices  
76 which evidence the purchase of the building materials used in  
77 such rehabilitation and the payment of sales tax on the building  
78 materials shall be attached to the sworn statement provided by  
79 the general contractor or by the applicant. Unless the actual  
80 cost of building materials used in the rehabilitation of real  
81 property and the payment of sales taxes due thereon is documented  
82 by a general contractor or by the applicant in this manner, the  
83 cost of such building materials shall be an amount equal to 40  
84 percent of the increase in assessed value for ad valorem tax  
85 purposes.

86           f. The identifying number assigned pursuant to s. 290.0065  
87 to the enterprise zone in which the rehabilitated real property  
88 is located.

89           g. A certification by the local building code inspector  
90 that the improvements necessary to accomplish the rehabilitation  
91 of the real property are substantially completed.

92           h. Whether the business is a small business as defined by  
93 s. 288.703(1).

94           i. If applicable, the name and address of each permanent  
95 employee of the business, including, for each employee who is a  
96 resident of an enterprise zone, the identifying number assigned  
97 pursuant to s. 290.0065 to the enterprise zone in which the  
98 employee resides.

99           2. This exemption inures to a city, county, other  
100 governmental agency, or nonprofit community-based organization  
101 through a refund of previously paid taxes if the building  
102 materials used in the rehabilitation of real property located in  
103 an enterprise zone are paid for from the funds of a community  
104 development block grant, State Housing Initiatives Partnership  
105 Program, or similar grant or loan program. To receive a refund  
106 pursuant to this paragraph, a city, county, other governmental  
107 agency, or nonprofit community-based organization must file an  
108 application which includes the same information required to be  
109 provided in subparagraph 1. by an owner, lessee, or lessor of  
110 rehabilitated real property. In addition, the application must  
111 include a sworn statement signed by the chief executive officer  
112 of the city, county, other governmental agency, or nonprofit  
113 community-based organization seeking a refund which states that  
114 the building materials for which a refund is sought were paid for  
115 from the funds of a community development block grant, State  
116 Housing Initiatives Partnership Program, or similar grant or loan  
117 program.



118           3. Within 10 working days after receipt of an application,  
119 the governing body or enterprise zone development agency shall  
120 review the application to determine if it contains all the  
121 information required pursuant to subparagraph 1. or subparagraph  
122 2. and meets the criteria set out in this paragraph. The  
123 governing body or agency shall certify all applications that  
124 contain the information required pursuant to subparagraph 1. or  
125 subparagraph 2. and meet the criteria set out in this paragraph  
126 as eligible to receive a refund. If applicable, the governing  
127 body or agency shall also certify if 20 percent of the employees  
128 of the business are residents of an enterprise zone, excluding  
129 temporary and part-time employees. The certification shall be in  
130 writing, and a copy of the certification shall be transmitted to  
131 the executive director of the Department of Revenue. The  
132 applicant shall be responsible for forwarding a certified  
133 application to the department within the time specified in  
134 subparagraph 4.

135           4. An application for a refund pursuant to this paragraph  
136 must be submitted to the department within 6 months after the  
137 rehabilitation of the property is deemed to be substantially  
138 completed by the local building code inspector or by September 1  
139 after the rehabilitated property is first subject to assessment.

140           5. The provisions of s. 212.095 do not apply to any refund  
141 application made pursuant to this paragraph. No more than one  
142 exemption through a refund of previously paid taxes for the  
143 rehabilitation of real property shall be permitted for any one  
144 parcel of property unless there is a change in ownership, a new  
145 lessor, or a new lessee of the real property. No refund shall be  
146 granted pursuant to this paragraph unless the amount to be  
147 refunded exceeds \$500. No refund granted pursuant to this

148 paragraph shall exceed the lesser of 97 percent of the Florida  
149 sales or use tax paid on the cost of the building materials used  
150 in the rehabilitation of the real property as determined pursuant  
151 to sub-subparagraph 1.e. or \$5,000, or, if no less than 20  
152 percent of the employees of the business are residents of an  
153 enterprise zone, excluding temporary and part-time employees, the  
154 amount of refund granted pursuant to this paragraph shall not  
155 exceed the lesser of 97 percent of the sales tax paid on the cost  
156 of such building materials or \$10,000. A refund approved pursuant  
157 to this paragraph shall be made within 30 days of formal approval  
158 by the department of the application for the refund. The  
159 provisions of this sub-paragraph shall apply retroactive to July  
160 1, 2005.

161 6. The department shall adopt rules governing the manner  
162 and form of refund applications and may establish guidelines as  
163 to the requisites for an affirmative showing of qualification for  
164 exemption under this paragraph.

165 7. The department shall deduct an amount equal to 10  
166 percent of each refund granted under the provisions of this  
167 paragraph from the amount transferred into the Local Government  
168 Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20 for  
169 the county area in which the rehabilitated real property is  
170 located and shall transfer that amount to the General Revenue  
171 Fund.

172 8. For the purposes of the exemption provided in this  
173 paragraph:

174 a. "Building materials" means tangible personal property  
175 which becomes a component part of improvements to real property.

176 b. "Real property" has the same meaning as provided in s.  
177 192.001(12).

178 c. "Rehabilitation of real property" means the  
179 reconstruction, renovation, restoration, rehabilitation,  
180 construction, or expansion of improvements to real property.

181 d. "Substantially completed" has the same meaning as  
182 provided in s. 192.042(1).

183 9. This paragraph expires on the date specified in s.  
184 290.016 for the expiration of the Florida Enterprise Zone Act.

185 Section 4. Paragraph (e) of subsection (1) and paragraph  
186 (e) of subsection (3) of section 212.096, Florida Statutes, are  
187 amended to read:

188 212.096 Sales, rental, storage, use tax; enterprise zone  
189 jobs credit against sales tax.--

190 (1) For the purposes of the credit provided in this  
191 section:

192 (e) "New job has been created" means that, on the date of  
193 application, the total number of full-time jobs is greater than  
194 it was 12 months prior to such date ~~has increased in an~~  
195 ~~enterprise zone during from the average of the previous 12~~  
196 ~~months,~~ as demonstrated to the department by a business located  
197 in the enterprise zone.

198  
199 A person shall be deemed to be employed if the person performs  
200 duties in connection with the operations of the business on a  
201 regular, full-time basis, provided the person is performing such  
202 duties for an average of at least 36 hours per week each month.  
203 The person must be performing such duties at a business site  
204 located in the enterprise zone.

205 (3) In order to claim this credit, an eligible business  
206 must file under oath with the governing body or enterprise zone  
207 development agency having jurisdiction over the enterprise zone

208 where the business is located, as applicable, a statement which  
209 includes:

210 (e) Demonstration to the department that, on the date of  
211 application, the total number of full-time jobs defined under  
212 paragraph (1)(d) is greater than it was 12 months prior to such  
213 date ~~has increased in an enterprise zone from the average of the~~  
214 ~~previous 12 months.~~

215 Section 5. Paragraph (a) of subsection (1) of section  
216 220.13, Florida Statutes, is amended to read:

217 220.13 "Adjusted federal income" defined.--

218 (1) The term "adjusted federal income" means an amount  
219 equal to the taxpayer's taxable income as defined in subsection  
220 (2), or such taxable income of more than one taxpayer as provided  
221 in s. 220.131, for the taxable year, adjusted as follows:

222 (a) Additions.--There shall be added to such taxable  
223 income:

224 1. The amount of any tax upon or measured by income,  
225 excluding taxes based on gross receipts or revenues, paid or  
226 accrued as a liability to the District of Columbia or any state  
227 of the United States which is deductible from gross income in the  
228 computation of taxable income for the taxable year.

229 2. The amount of interest which is excluded from taxable  
230 income under s. 103(a) of the Internal Revenue Code or any other  
231 federal law, less the associated expenses disallowed in the  
232 computation of taxable income under s. 265 of the Internal  
233 Revenue Code or any other law, excluding 60 percent of any  
234 amounts included in alternative minimum taxable income, as  
235 defined in s. 55(b)(2) of the Internal Revenue Code, if the  
236 taxpayer pays tax under s. 220.11(3).

237 3. In the case of a regulated investment company or real  
238 estate investment trust, an amount equal to the excess of the net  
239 long-term capital gain for the taxable year over the amount of  
240 the capital gain dividends attributable to the taxable year.

241 4. That portion of the wages or salaries paid or incurred  
242 for the taxable year which is equal to the amount of the credit  
243 allowable for the taxable year under s. 220.181. The provisions  
244 of this subparagraph shall expire and be void on the date  
245 specified in s. 290.016 for the expiration of the Florida  
246 Enterprise Zone Act ~~June 30, 2005~~.

247 5. That portion of the ad valorem school taxes paid or  
248 incurred for the taxable year which is equal to the amount of the  
249 credit allowable for the taxable year under s. 220.182. The  
250 provisions of this subparagraph shall expire and be void on the  
251 date specified in s. 290.016 for the expiration of the Florida  
252 Enterprise Zone Act ~~June 30, 2005~~.

253 6. The amount of emergency excise tax paid or accrued as a  
254 liability to this state under chapter 221 which tax is deductible  
255 from gross income in the computation of taxable income for the  
256 taxable year.

257 7. That portion of assessments to fund a guaranty  
258 association incurred for the taxable year which is equal to the  
259 amount of the credit allowable for the taxable year.

260 8. In the case of a nonprofit corporation which holds a  
261 pari-mutuel permit and which is exempt from federal income tax as  
262 a farmers' cooperative, an amount equal to the excess of the  
263 gross income attributable to the pari-mutuel operations over the  
264 attributable expenses for the taxable year.

265 9. The amount taken as a credit for the taxable year under  
266 s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

Section 6. Paragraph (a) of subsection (1) and paragraph (f) of subsection (2) of section 220.181, Florida Statutes, are amended to read:

220.181 Enterprise zone jobs credit.--

(1)(a) There shall be allowed a credit against the tax imposed by this chapter to any business located in an enterprise zone which demonstrates to the department that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to such date ~~has increased from the average of the previous 12 months~~. The credit shall be computed as 20 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, as defined under s. 220.03(1)(ff), unless the business is located in a rural enterprise zone, pursuant to s. 290.004(6), in which case the credit shall be 30 percent of the actual monthly wages paid. If no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the credit shall be computed as 30 percent of the actual monthly wages paid in this state to each new employee hired when a new job has been created, unless the business is located in a rural enterprise zone, in which case the credit shall be 45 percent of the actual monthly wages paid, for a period of up to 24 consecutive months. If the new employee hired when a new job is created is a participant in the welfare transition program, the following credit shall be a percent of

the actual monthly wages paid: 40 percent for \$4 above the hourly federal minimum wage rate; 41 percent for \$5 above the hourly federal minimum wage rate; 42 percent for \$6 above the hourly federal minimum wage rate; 43 percent for \$7 above the hourly federal minimum wage rate; and 44 percent for \$8 above the hourly federal minimum wage rate.

(2) When filing for an enterprise zone jobs credit, a business must file under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable, a statement which includes:

(f) Demonstration to the department that, on the date of application, the total number of full-time jobs is greater than it was 12 months prior to that date ~~has increased from the average of the previous 12 months.~~

Section 7. Subsection (6) of section 290.0055, Florida Statutes, is amended to read:

290.0055 Local nominating procedure.--

(6)(a) The office may approve a change in the boundary of any enterprise zone which was designated pursuant to s. 290.0065. A boundary change must continue to satisfy the requirements of subsections (3), (4), and (5).

(b) Upon a recommendation by the enterprise zone development agency, the governing body of the jurisdiction which authorized the application for an enterprise zone may apply to the office for a change in boundary once every 3 years by adopting a resolution that:

1. States with particularity the reasons for the change;  
and

326 2. Describes specifically and, to the extent required by  
327 the office, the boundary change to be made.

328 (c) At least 90 days before adopting a resolution seeking a  
329 change in the boundary of an enterprise zone, the governing body  
330 must notify in writing all property owners and businesses that  
331 may be excluded from the enterprise zone by virtue of the  
332 proposed boundary change.

333 Section 8. (1) Notwithstanding the provisions of s.  
334 212.08(5)(g), a business performing a project involving the  
335 rehabilitation of real property that has been excluded from an  
336 enterprise zone because of the redesignation requirements of ss.  
337 290.012 or 290.0065 shall remain eligible to apply for the  
338 building materials tax exemption under s. 212.08(5)(g) for that  
339 project through December 31, 2007 if the following requirements  
340 are met:

341 (a) The project must be located in an enterprise zone on or  
342 before December 31, 2005;

343 (b) The project must have a duration extending beyond  
344 December 31, 2005;

345 (c) The project has been excluded from the enterprise zone  
346 because the portion of the zone in which the project is located  
347 did not meet the pervasive poverty rate requirements of s.  
348 290.0058(2)(a) or (b);

349 (d) The difference between the pervasive poverty rate  
350 requirements of s. 290.0058(2)(a) and the actual poverty rate in  
351 the area in which the project is located must be 5 percentage  
352 points or less;

353 (e) The business applies for a certificate of eligibility  
354 for the project with the enterprise zone development agency by



355 November 1, 2006 and demonstrates that the project meets the  
356 requirements of this section; and

357 (f) The enterprise zone development agency provides a copy  
358 of the certificate of eligibility to the Department of Revenue.


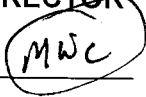
359 (2) The provisions of this section are remedial in nature  
360 and shall apply retroactively to December 31, 2005. This section  
361 shall stand repealed on December 31, 2007.

362 Section 9. This act shall take effect upon becoming law..



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EDTB 06-03 Internet Phishing  
**SPONSOR(S):** Economic Development, Trade & Banking Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

| REFERENCE  | ACTION | ANALYST   | STAFF DIRECTOR  |
|--|--------|---|---|
| Orig. Comm.: Economic Development, Trade & Banking Committee |        | Olmedilla  | Carlson  |
| 1) _____   | _____  | _____   | _____   |
| 2) _____   | _____  | _____   | _____   |
| 3) _____   | _____  | _____   | _____   |
| 4) _____   | _____  | _____   | _____   |
| 5) _____   | _____  | _____   | _____   |

### SUMMARY ANALYSIS

This bill creates the "Anti-Phishing Act of 2006" and will prohibit the acquisition of personal identifying information through the use of a website or e-mail with the intent to possess or use such information fraudulently.

The bill creates a civil cause of action for Internet access providers and web page or trademark owners harmed by a violation as well as the Attorney General.

The bill provides these plaintiffs with the power to seek injunctive relief and damages in the greater amount of the actual damages arising from the violation, or \$100,000, for each violation of the same nature. A court may increase damages to three times the actual damages sustained if violations constitute a pattern. The bill does not preclude the award of damages otherwise available under federal or state law.

The bill provides for an award of attorney's fees and costs to a prevailing plaintiff.

The bill also makes a violation a prohibited act under the Florida Deceptive and Unfair Trade Practices Act.

The bill provides for an effective date of October 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill should deter identity theft in Florida, protecting Florida citizens.

Promote personal responsibility: The bill increases personal accountability for unlawful actions and injurious behavior.

Limited Government: The bill creates a new civil cause of action designed to deter and punish illegal activity.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Identity theft is a substantial problem in the United States and “phishing” represents the cutting edge of this devious practice.

“Phishing” refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently. Typically, a person attempting to obtain information sends an e-mail that appears to come from a bank or other trusted business requesting an individual to verify their account by typing personal identifying information, such as credit card information, social security numbers, account usernames, passwords, etc. Another method is to use a phony web site to trick citizens into forfeiting sensitive personal information.

The Federal Trade Commission (FTC) reported that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million people in 2003 alone.<sup>1</sup> According to the FTC, last year’s identity theft losses to businesses and financial institutions totaled nearly \$48 billion and consumer victims reported \$5 billion in out-of-pocket expenses.<sup>2</sup>

Moreover, according to the Anti-Phishing Working Group, the volume of fraudulent phishing e-mail is growing at a rate in excess of 30 percent each month.<sup>3</sup>

##### **Florida Deceptive and Unfair Trade Practices Act**

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Chapter 501 part II, F.S., makes unlawful unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. “Trade or commerce,” which includes the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity, is defined as the advertising, soliciting, providing, offering or distributing, whether by sale, rental, or rental, or otherwise of any good or service or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated.<sup>4</sup>

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<sup>1</sup> See article issued by Federal Trade Commission, dated September 3, 2003 “FTC Releases Survey of Identity Theft in U.S. 27.3 Million Victims in Past 5 Years, Billions in Losses for Businesses and Consumers”. See also <http://www.ftc.gov/opa/2003/idtheft.htm>.

<sup>2</sup> Id.

<sup>3</sup> The Anti-Phishing Working Group (APWG) is a global pan-industrial and law enforcement association that focuses on eliminating fraud and identity theft that results from phishing and e-mail spoofing of all types.

<sup>4</sup> Section 501.203(8), F.S.

The enforcing authority of the FDUTPA is the local state attorney for violations within a single judicial circuit or the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or, in cases affecting a single judicial circuit, when the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.<sup>5</sup> The act provides for cease and desist orders, remedies by the enforcing authority, civil penalties, and receipt by the prevailing party of attorney's fees and costs in civil litigation.<sup>6</sup>

A willful violation of FUDTPA subjects the violator to a civil penalty of not more than \$10,000 for each violation.<sup>7</sup> In any civil litigation initiated by the enforcing authority, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.<sup>8</sup>

An individual harmed by a violation of the FUDTPA may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory judgment that an act or practice violates the FUDTPA and to enjoin a person who has violated, is violating, or is otherwise likely to violate the act.<sup>9</sup> In such an action, the person may recover actual damages, plus attorney's fees and court costs.<sup>10</sup>

### **Anti-Phishing Bills in Congress**

The Subcommittee on Crime, Terrorism, and Homeland Security of the U.S. House of Representatives is currently reviewing H.R. 1099, which criminalizes internet scams involving the fraudulent obtaining of information, commonly known as "phishing".<sup>11</sup>

H.R. 1099 bill imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in an activity constituting fraud or identity theft under Federal or State law: (1) creates or procures the creation of a website or domain name that represents itself as a legitimate online business without the authority or approval of the registered owner of such business; and (2) uses that website or domain name to solicit means of identification from any person.

In addition, H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in activity constituting fraud or identity theft under Federal or State law sends an electronic mail message that: (1) falsely represents itself as being sent by a legitimate online business; (2) includes an Internet location tool referring or linking users to an online location on the World Wide Web that falsely purports to belong to or be associated with a legitimate online business; and (3) solicits means of identification from the recipient.

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<sup>5</sup> Section 501.203(2), F.S.

<sup>6</sup> Section 501.208(1), F.S.

<sup>7</sup> Section 501.619, F.S.

<sup>8</sup> Section 501.621, F.S.

<sup>9</sup> Section 501.211(1), F.S.

<sup>10</sup> Section 501.211(2), F.S.

<sup>11</sup> The Senate companion, S.472 is before the Judiciary Committee.

## **Effect of Proposed Changes**

### **Name**

Creates the "Anti-Phishing Act of 2006".

### **Prohibited Acts**

This bill prohibits obtaining identifying information from individuals through certain means via the Internet with the intent to possess or use such information fraudulently. The bill prohibits:

- Creating a web page or Internet domain name representing a legitimate online business without the business owner's authorization; and
- Using that web page, a link to the web page, or another site on the Internet to induce, request, or solicit another person to provide identifying information for a purpose that the other person believes is legitimate.

The bill also prohibits sending or causing to be sent an e-mail to a resident of this state that:

- Falsely represents itself as being sent from a legitimate business;
- Refers or links the recipient to a falsely represented web site; and
- Directly or indirectly solicits from the recipient identifying information for a purpose that the recipient believed to be legitimate.

The bill creates definitions for use in interpreting and implementing the protections of this part, as follows:

- **"Electronic mail message"** means an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.<sup>12</sup>
- **"Electronic mail address"** means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.<sup>13</sup>
- **"Identifying information"** means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
  1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
  2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
  3. Unique electronic identification number, address, or routing code;

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<sup>12</sup> s. 668.602(7), F.S.

<sup>13</sup> s. 668.602(6), F.S.

4. Medical records;
5. Telecommunication identifying information or access device; or
6. Other number or information that can be used to access a person's financial resources.<sup>14</sup>

- **"Internet domain name"** means a globally unique, hierarchical reference to an Internet host or service, which is assigned through centralized Internet naming authorities and which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.<sup>15</sup>
- **"Web page"** means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

### Remedies

The bill gives standing to bring a civil action under this part to:

- An Internet access provider providing services to the public who was harmed by a violation under this bill;
- An owner of a web page or trademark who was harmed by a violation under this bill; or
- The Attorney General.

A person bringing an action may seek injunctive relief to halt a violation under this bill, recover damages in the greater amount of the actual damages arising from the violation, or \$100,000 for each violation of the same nature, or seek both injunctive relief and recover damages. Violations are considered of the same nature if they consisted of the same action or course of conduct regardless of how many times the act occurred. A court may increase damages to three times the actual damages sustained if violations constitute a pattern or practice.

The bill also provides for an award of attorney's fees and costs to a prevailing plaintiff.

The bill does not preclude the award of damages otherwise available for the same conduct pursuant to federal or state law. Moreover, this bill renders a prohibited act under this part a Florida Deceptive and Unfair Trade Practice under ch. 501, F.S.

### Exemption

The bill exempts from liability a telecommunication provider's or an Internet service provider's good faith transmission or intermediate temporary storing of identifying information.

## C. SECTION DIRECTORY:

Section 1: Creates s.668.6076, F.S. to provide a title; s.668.6077, F.S., to provide definitions; s.668.6078, F.S. to provide prohibited acts; s.668.6079, F.S. to provide remedies and standing; and s.668.6080, F.S. to provide an exemption.

Section 2: Provides an effective date.

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<sup>14</sup> s. 817.568(1)(f), F.S.

<sup>15</sup> s. 668.602(10), F.S.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See Fiscal Comments.

#### **2. Expenditures:**

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill may lessen the frequency of identify theft and the costs associated with such theft, to the benefit of Florida citizens and businesses.

### **D. FISCAL COMMENTS:**

The Attorney General could bring an action to recover damages in the greater amount of the actual damages arising from the violation, or \$100,000 for each violation of the same nature, or seek both injunctive relief and recover damages. A court could increase damages to three times the actual damages sustained if violations constituted a pattern. The revenue derived from these actions is indeterminate.

The bill grants the Attorney General authority to enforce violations under this bill. Therefore, the Attorney General will incur costs in order to prosecute persons that violate this bill. The costs, however, are indeterminate.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.



**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill does not grant a citizen, whose personal identifying information was stolen and who was negatively affected by a violation of this part, a cause of action against the culprit.

The Attorney General suggests that some of the language may need to be defined, such as registered owner and registration. Additionally, the Attorney General voiced concerns regarding the difficulty of enforcement of this bill for violators located in foreign countries.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

1 A bill to be entitled  
2 An act relating to the Anti-Phishing Act of 2006; creating  
3 pt. IV of ch. 668, F.S.; providing a title; providing  
4 definitions; prohibiting the creation of web page or  
5 domain name for fraudulent purposes; prohibiting  
6 electronic mail fraud for the purpose of using or  
7 obtaining personal identifying information; providing a  
8 civil remedy; creating an exemption; providing an  
9 effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

12  
13 Section 1. Part IV of chapter 668, Florida Statutes,  
14 consisting of sections 668.6076, 668.6077, 668.6078, 668.6079 and  
15 668.6080, is created to read:

16 668.6076 Short Title.--This part may be known by the popular  
17 name of the "Anti-Phishing Act of 2006."

18 668.6077 Definitions.--As used in this part the term:

19 (1) "Electronic mail message" shall have the definition  
20 provided by s. 668.602(7).

21 (2) "Electronic mail address" shall have the definition  
22 provided by s. 668.602(6).

23 (3) "Identifying information" shall have the definition  
24 provided by s. 817.568(1)(f).

25 (4) "Internet domain name" shall have the definition  
26 provided by s. 668.602(10).

27 (5) "Web page" means a location that has a single uniform  
28 resource locator (URL) with respect to the world wide web or  
29 another location that can be accessed on the Internet.

30 668.6078 Prohibited Acts.--

31 (1) A person may not, with the intent to engage in conduct  
32 involving the fraudulent use or possession of another person's  
33 identifying information:

34 (a) Create a web page or Internet domain name that is  
35 represented as a legitimate online business without the  
36 authorization of the registered owner of the business; and

37 (b) Use that web page or a link to the web page, that  
38 domain name, or another site on the Internet to induce, request,  
39 or solicit another person to provide identifying information for  
40 a purpose that the other person believes is legitimate.

41 (2) A person may not, with the intent to engage in conduct  
42 involving the fraudulent use or possession of identifying  
43 information, send or cause to be sent to an electronic mail  
44 address held by a resident of this state an electronic mail  
45 message that:

46 (a) Is falsely represented as being sent by a legitimate  
47 online business;

48 (b) Refers or links the recipient of the message to a web  
49 page that is represented as being associated with the legitimate  
50 online business; and

51 (c) Directly or indirectly induces, requests, or solicits  
52 the recipient of the electronic mail message to provide  
53 identifying information for a purpose that the recipient believes  
54 is legitimate.

55 668.6079 Remedies.--

56 (1) The following persons may bring a civil action against a  
57 person who violates this part:

58 (a) A person engaged in the business of providing Internet  
59 access service to the public who is adversely affected by the  
60 violation;

61 (b) An owner of a web page or trademark who is adversely  
62 affected by the violation; or

63 (c) The attorney general.

64 (2) A person bringing an action under this section may:

65 (a) Seek injunctive relief to restrain the violator  
66 from continuing the violation.

67 (b) Recover damages in an amount equal to the greater of:

68 1. Actual damages arising from the violation; or

69 2. \$100,000 for each violation of the same nature.

70 (3) The court may increase an award of actual damages in an  
71 action brought under this section to an amount not to exceed  
72 three times the actual damages sustained if the court finds that  
73 the violations have occurred with a frequency as to constitute a  
74 pattern or practice.

75 (4) A plaintiff who prevails in an action filed under this  
76 section is entitled to recover reasonable attorney's fees and  
77 court costs.

78 (5) For purposes of this section, violations are of the  
79 same nature if the violations consist of the same course of  
80 conduct or action, regardless of the number of times the conduct  
81 or act occurred.

82 (6) A violation of s. 668.6078 shall be deemed an unfair  
83 and deceptive trade practice within the meaning of part II of  
84 chapter 501. In addition to any remedies or penalties set forth  
85 in that part, a violator shall be subject to the penalties and  
86 remedies provided for in this part.

87 (7) The remedies available in this part are in addition to  
88 remedies otherwise available for the same conduct under federal  
89 or state law.

90 668.6080 Exemption.--This part does not apply to a

91 telecommunications provider's or Internet service provider's good  
92 faith transmission or routing of, or intermediate temporary  
93 storing or caching of, identifying information.

94       Section 2. This act shall take effect on October 1, 2006  
95 and shall apply to an electronic mail message sent on or after  
96 that date.